

TO: SENATE JUDICIARY COMMITTEE

FROM: Mary "Marty" Phippen, Lobbyist
Mt. Magistrates Association

RE: CORRECTIONS TO TESTIMONY AT COMMITTEE HEARING ON 3/7/2007


THE FOLLOWING COUNTIES HAVE JUSTICE COURTS OF RECORD:

Cascade County
Lewis & Clark County
Flathead County

I was incorrect in stating that Yellowstone County Justice Court is a court or record.

5-day
THE MAGISTRATES MUST ATTEND TWO (2) *5-day* TRAINING SESSIONS PER YEAR
UNDER THE SUPERVISION OF THE SUPREME COURT AND THEY MUST PASS A
CERTIFICATION TEST EVERY FOUR (4) YEARS.

I sincerely apologize for my incorrect testimony and for any inconvenience.



Mary "Marty" Phippen, Lobbyist
Mt. Magistrates Association

Sender: "Carver, Larry" <lcarver@mt.gov>

My state, Stanford, Mt

E-mail Source

Subject: FW:

Date: Thu, 8 Mar 2007 10:22:48 -0700

To: "Marty Phippen \ (E-mail\)" <mhippen@bresnan.net>

-----Original Message-----

From: Carver, Larry

Sent: Thursday, March 08, 2007 10:22 AM

To: O'Malley, Mary Ann

Subject:

This bill allows the same option for city fathers to designate city courts as courts of record as county commissioners have to designate Justice Courts as courts of record. Justice Courts of Record 3-10-101.

Since 2003, 3 counties have designated Justice Courts as Courts of record. Cascade County, Lewis & Clark County and most recently Flathead County. Cascade County and Flathead County have attorney judges and Lewis & Clark county does not. Lewis & Clark County has been a court of record for 3 years and has not had to fully re-try a case during that time period as a result of an appeal or an error of law.

Courts of Limited Jurisdiction have been courts of record for over 20 years involving Small Claims Matters and child detention hearings. Small Claims matters have the same limited appeal on the record as the new justice courts of record or the municipal courts. The process has worked very well.

The bottom line is, the decision to become a court of record is upon the local enteritis, the attorneys practicing before the courts, the litigants, the judges and the executive branch of the county or city government. They will know if it works or not. I believe we will see more Justice Courts of Records in the next couple of years, both attorney and non-attorney judges.

Training requirements are mandatory attendance at 2 sessions per year supervised by the Supreme Court and administered by the Commission on Courts of Limited Jurisdiction. Every Judge has to pass a certification test every 4 years to retain his/her job. Continuing legal education credits are given for these classes.

Montana Code Annotated 2005

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25-33-301. Trial de novo -- pleadings -- conduct of trial. (1) Except as provided in subsection (3), all appeals from justices' or city courts must be tried anew in the district court on the papers filed in the justice's or city court unless the court, for good cause shown and on terms that are just, allows other or amended pleadings to be filed in the action. The court may order new or amended pleadings to be filed. Each party has the benefit of all legal objections made in the justice's or city court.

(2) When the action is tried anew on appeal, the trial must be conducted in all respects as other trials in the district court. The provisions of this code as to trials in the district courts are applicable to trials on appeal in the district court.

(3) The appeal from a justice's court of record pursuant to 3-10-101 is on the record as provided in 3-10-115.

History: (1)En. Sec. 641, p. 170, Bannack Stat.; re-en. Sec. 746, p. 186, Cod. Stat. 1871; re-en. Sec. 806, 1st Div. Rev. Stat. 1879; re-en. Sec. 826, 1st Div. Comp. Stat. 1887; amd. Sec. 1761, C. Civ. Proc. 1895; re-en. Sec. 7122, Rev. C. 1907; re-en. Sec. 9755, R.C.M. 1921; re-en. Sec. 9755, R.C.M. 1935; Sec. 93-7902, R.C.M. 1947; (2)En. Sec. 1766, C. Civ. Proc. 1895; re-en. Sec. 7127, Rev. C. 1907; re-en. Sec. 9760, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 980; re-en. Sec. 9760, R.C.M. 1935; Sec. 93-7907, R.C.M. 1947; R.C.M. 1947, 93-7902(part), 93-7907(part); amd. Sec. 11, Ch. 389, L. 2003; amd. Sec. 10, Ch. 557, L. 2005.

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3-10-115. Appeal to district court from justice's court of record -- record on appeal. (1) A party may appeal to district court a judgment or order from a justice's court of record. The appeal is confined to review of the record and questions of law, subject to the supreme court's rulemaking and supervisory authority.

(2) The record on appeal to district court consists of an electronic recording or stenographic transcription of a case tried, together with all papers filed in the action.

(3) The district court may affirm, reverse, or amend any appealed order or judgment and may direct the proper order or judgment to be entered or direct that a new trial or further proceeding be had in the court from which the appeal was taken.

(4) Unless the supreme court establishes rules for appeal from a justice's court of record to the district court, the Montana Uniform Municipal Court Rules of Appeal to District Court, codified in Title 25, chapter 30, apply to appeals to district court from the justice's court of record.

History: En. Sec. 8, Ch. 389, L. 2003; amd. Sec. 6, Ch. 557, L. 2005.

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3-6-101. Establishment of court. (1) A city with a population of 4,000 or more, according to the last federal census, may have a court, known as the municipal court of the city of (designating the name of the city) of the state of Montana. The court must be a court of record. The municipal court shall assume continuing jurisdiction over all pending city court cases in the city in which the municipal court is established.

(2) A city may have a municipal court only if the governing body of the city elects by a two-thirds majority vote to adopt the provisions of this chapter by ordinance and, in the ordinance, provides the manner in which and time when the municipal court is to be established and is to assume continuing jurisdiction over all pending city court cases. If a city judge is not an attorney and his office is abolished because a municipal court is established, the ordinance must provide that the time when the establishment of the municipal court takes effect is the date on which the municipal court judge elected at the next election held under [3-6-201](#) begins his term of office. The ordinance must be consistent with the provisions of this chapter.

History: En. Sec. 1, Ch. 177, L. 1935; re-en. Sec. 5094.1, R.C.M. 1935; amd. Sec. 1, Ch. 429, L. 1977; R.C.M. 1947, 11-1701; amd. Sec. 1, Ch. 99, L. 1991.

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